

From: Lauren Kabler/DC/USEPA/US
Sent: 6/27/2012 2:20:17 PM
To: Tim Sullivan/DC/USEPA/US@EPA
CC:
Subject: Re: GAO Study on Hydraulic Fracturing - OCE Comments on Appendices and Follow-up Questions

P.S. Gwen may call you. Ex. 5 - Deliberative Have left her a message and waiting for her to call back.

Lauren V. Kabler
Special Legal Counsel
Office of Civil Enforcement
U.S. EPA-----

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Tim Sullivan
Sent: 06/27/2012 02:16 PM EDT
To: Lauren Kabler
Cc: Andrew Stewart; Bernadette Rappold
Subject: Re: GAO Study on Hydraulic Fracturing - OCE Comments on Appendices and Follow-up Questions

Lauren:

There are some additional revisions pending; you should receive the final responses shortly.

Thanks --

Timothy J. Sullivan, Attorney-Advisor
Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248A)
Washington, D.C. 20460

Telephone: 202.564.2723
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From: Lauren Kabler/DC/USEPA/US
To: Tim Sullivan/DC/USEPA/US@EPA, Bernadette Rappold/DC/USEPA/US@EPA
Cc: Andrew Stewart/DC/USEPA/US@EPA
Date: 06/27/2012 02:11 PM
Subject: Re: GAO Study on Hydraulic Fracturing - OCE Comments on Appendices and Follow-up Questions

Bern - ok to send? Thanks!
Lauren V. Kabler
Special Legal Counsel
Office of Civil Enforcement

----- Original Message -----

From: Tim Sullivan

Sent: 06/27/2012 12:22 PM EDT

To: Bernadette Rappold

Cc: Andrew Stewart; Lauren Kabler

Subject: Re: GAO Study on Hydraulic Fracturing - OCE Comments on Appendices and Follow-up Questions

Bern:

Andrew and I further discussed GAO's enforcement follow-up questions this morning and we have developed revised proposed responses. Please review the revised proposed responses directly below and let us know your thoughts.

Thanks in advance --

Tim

Enforcement - GAO Follow-up Question 1

1. Throughout this engagement, we have asked media offices and regions to share examples of where EPA has been involved in investigating possible contamination or violations, and examples of enforcement actions, at well sites. We have received the following examples -- are there additional investigations or examples of enforcement actions at well sites that we should be aware of?

- a. Pavilion, WY
- b. Range Resources, Parker County, TX
- c. Dimock, PA
- d. Chesapeake Energy, Bradford County, PA
- e. BP Alaska (1992-1995) - Conventional well
- f. Poplar, MT - conventional well

Proposed Response

Ex. 5 - Deliberative

Enforcement GAO Follow-up Question 2

2. In addition, several programs provided examples or discussed compliance or enforcement actions at wells, such as Region 3 & 6 Clean Air Act General Duty Clause inspections. Other programs could identify compliance or enforcement actions at oil and gas production facilities but could not easily identify whether some involved well sites, such as SPCC inspections (note: we submitted a separate question on those).

- a. Are there any other examples of investigations or enforcement focused on well sites that EPA would like to share

with us?

- b. Does EPA have any ideas about why there are relatively few such activities at well sites?

Proposed Response

Ex. 5 - Deliberative

Enforcement GAO Follow-up Question 3

3. Re: Bradford County PA blowout - We have a copy of EPA's letter to Chesapeake sent April 22, 2011 requesting information.

- a. What happened after that?
- b. If Chesapeake responded, please provide a copy of the response.
- c. If not, did Chesapeake provide the list of chemicals contained in the releases?
- d. Did EPA drop its investigation and defer to the state? Please explain.

Proposed Response

Ex. 5 - Deliberative

Timothy J. Sullivan, Attorney-Advisor
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From: Tim Sullivan/DC/USEPA/US
To: Bernadette Rappold/DC/USEPA/US@EPA, Andrew Stewart/DC/USEPA/US@EPA
Cc: Lauren Kabler/DC/USEPA/US@EPA
Date: 06/26/2012 05:25 PM
Subject: Re: GAO Study on Hydraulic Fracturing - OCE Comments on Appendices and Follow-up Questions

Bern and Andrew:

Ex. 5 - Deliberative

Thanks --

Tim

Question 1

1. Throughout this engagement, we have asked media offices and regions to share examples of where EPA has been involved in investigating possible contamination or violations, and examples of enforcement actions, at well sites. We have received the following examples -- are there additional investigations or examples of enforcement actions at well sites that we should be aware of?

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Proposed response

Ex. 5 - Deliberative

Question 2

2. In addition, several programs provided examples or discussed compliance or enforcement actions at wells, such as Region 3 & 6 Clean Air Act General Duty Clause inspections. Other programs could identify compliance or enforcement actions at oil and gas production facilities but could not easily identify whether some involved well sites, such as SPCC inspections (note: we submitted a separate question on those).

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Proposed response

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Question 3

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- What happened after that?
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Propose response for Internal Use ONLY

Ex. 5 - Deliberative

Timothy J. Sullivan, Attorney-Advisor
Special Litigation and Projects Division
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From: Gwendolyn Spriggs/DC/USEPA/US
To: Andrew Stewart/DC/USEPA/US@EPA
Cc: Bernadette Rappold/DC/USEPA/US@EPA, Lauren Kabler/DC/USEPA/US@EPA, Tim Sullivan/DC/USEPA/US@EPA
Date: 06/26/2012 04:32 PM
Subject: Re: GAO Study on Hydraulic Fracturing - OCE Comments on Appendices and Follow-up Questions

Andrew,

Did your staff complete the enforcement questions (see below) If so, please share the responses. I didn't see them as part of your earlier submission. OGC is inquiring about them:

Thanks, GJS 564-2439:

Additionally Enforcement Questions received from GAO:

- Throughout this engagement, we have asked media offices and regions to share examples of where EPA has been involved in investigating possible contamination or violations, and examples of enforcement actions, at well sites. We have received the following examples -- are there additional investigations or examples of enforcement actions at well sites

that we should be aware of?

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From: Andrew Stewart/DC/USEPA/US

To: Gwendolyn Spriggs/DC/USEPA/US@EPA

Cc: Lauren Kabler/DC/USEPA/US@EPA, Bernadette Rappold/DC/USEPA/US@EPA, Tim Sullivan/DC/USEPA/US@EPA

Date: 06/25/2012 05:33 PM

Subject: GAO Study on Hydraulic Fracturing - OCE Comments on Appendices and Follow-up Questions

Gwendolyn:

I am forwarding OCE's proposed comments on GAO's appendices for the hydraulic fracturing study in the attached Word documents.

In addition, our proposed responses (or notes on which program office we believe should respond) to GAO's follow-up questions are in the text below.

Please note that GAO provided its follow-up questions in a Word document only for the Clean Air Act. For all other statutes, GAO provided email follow-up questions.

Ex. 5 - Deliberative

Please contact me with any questions.

Thanks,

Andrew

Andrew Stewart

Chief, Litigation and Audit Policy Branch

Special Litigation and Projects Division

U.S. Environmental Protection Agency

(p) 202.564.1463

(f) 202.564.9001

Clean Air Act (CAA) Appendix

CAA Follow-up Questions -- GAO provided its follow-up questions in a Word Document only for the CAA

[attachment "Follow-up questions regarding the Clean Air Act.doc" deleted by Tim Sullivan/DC/USEPA/US]

5. To what extent does the prohibition on aggregation of oil and gas well sites for air toxics regulations impair EPA's ability to protect air quality?

Ex. 5 - Deliberative

Clean Water Act (CWA) Appendix

[attachment "GAO HF CWA Appendix - OCE Comm.doc" deleted by Tim Sullivan/DC/USEPA/US]

CWA Follow-up Questions

1. Regarding the SPCC program, you told us that in FY11 EPA conducted 120 oil and gas well sites and found noncompliance at 105 of these sites. You also said that the noncompliance ranged from paperwork inconsistencies to "more serious violations." How many of the 105 noncompliance issues were "more serious violations?" Please provide 3-5 examples of what constitutes a "more serious violation."

Ex. 5 - Deliberative

2. Does EPA have any information on the number of NPDES permits issued for dischargers in the Agricultural and Wildlife Water Use subcategory? If state-issued permit information is not available, does EPA have these data for locations that it directly implements the NPDES program? Finally, have any EPA studies (other than the coalbed methane study) looked at either the number of Agricultural and Wildlife Water Use dischargers, or the number of such permits?

Ex. 5 - Deliberative

3. Is EPA aware of any instances where any general pretreatment provision (e.g., corrosion, pass-through causing violation of a NPDES permit, interference with sludge) was violated by an indirect discharge of produced wastewater?

Ex. 5 - Deliberative

Safe Drinking Water Act (SDWA) Appendix

[attachment "GAO HF SDWA Appendix - OCE Comm.doc" deleted by Tim Sullivan/DC/USEPA/US]

SDWA Follow-up Questions

1. What is the status of seismic workgroup? What output (documents) is expected? What are the timelines?

Ex. 5 - Deliberative

2. To what extent does the exemption of hydraulic fracturing (except with diesel) from UIC requirements impair EPA's ability to protect underground sources of drinking water?

Ex. 5 - Deliberative

3. Is the 2003 MOU with Halliburton, BJ Services, and Schlumberger still in effect as to all 3 companies? (Paragraph V provides that any Company or EPA may terminate its participation in this MOA by providing written notice to the other signatories.)

- Has EPA received any notifications of diesel use under the agreement?

Ex. 5 - Deliberative

4. Regarding these provisions:

- 144.21(c): Injection into a well authorized by rule is prohibited...(9) For Class II wells (except enhanced recovery and hydrocarbon storage), five years after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision.

- 144.21 (d) Class II and III wells in existing fields or projects. Notwithstanding the prohibition in § 144.11, this section authorizes Class II and Class III wells or projects in existing fields or projects to continue normal operations until permitted, including construction, operation, and plugging and abandonment of wells as part of the operation...

Please confirm it is accurate to summarize as follows: "Existing Class II wells, and new such wells built in existing fields, were generally authorized by rule for up to five years from the effective date of the initial program (for federal implementation states, 1989), subject to conditions and requirements, with the expectation that these wells would obtain permits for continued operations thereafter." We would like to explain at a high level that over time, most existing Class II injection wells would come under the regulations. If this is incorrect, please explain. For example, if most pre-existing injection wells are still operating under section 144.21(d), please state as much.

Ex. 5 - Deliberative

5. Does EPA have any information on whether some class II wells continue to operate under the authorization by rule, or should they all be under a permit by now?

Ex. 5 - Deliberative

6. In an interview, EPA officials suggested we refer to guidance on how to do site characterization for area of review, as potentially being relevant to seismicity concerns. We reviewed guidance on this website

<http://water.epa.gov/type/groundwater/uic/guidance.cfm> but did not see anything that adds significantly to what is in the regulation for site characterization. Please point to any relevant guidance.

Ex. 5 - Deliberative

7. Explain what EPA approval procedures and requirements pertain to state designations of exempted aquifers under the provision that they are, or capable of, hydrocarbon production. See 40 C.F.R. § 144.7(b)(3) ("For approved State programs exemption of aquifers identified (i) under § 146.04(b) shall be treated as a program revision under § 145.32"); § 146.04(b) (allowing exemption of aquifers that are producing or are economically producible for hydrocarbons); § 145.32 (establishing procedures for EPA approval of program revisions). If EPA is not required to approve these, please explain.

Ex. 5 - Deliberative

8. An EPA presentation suggested that EPA, in direct implementation states, can require plugging of old/abandoned wells in a formation prior to permitting a new injection well. Is this correct? If so please provide citations as appropriate.

Ex. 5 - Deliberative

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Appendix

[attachment "GAO HF CERCLA Appendix - OCE-OSRE-OGC_Comm.docx" deleted by Tim Sullivan/DC/USEPA/US]

Ex. 5 - Deliberative

CERCLA Follow-up Questions

1. At our meeting, we believe we heard that EPA had used CERCLA section 104(e) to collect information on unconventional oil and gas activities to support the hydraulic fracturing study. However, our review of the Halliburton subpoena and the information request letters sent to hydraulic fracturing service companies and to oil and gas companies do not reflect CERCLA authorities. Please clarify.

Ex. 5 - Deliberative

Resource Conservation and Recovery Act (RCRA) Appendix

[attachment "GAO HF RCRA Appendix - OCE-OSRE_Comm.docx" deleted by Tim Sullivan/DC/USEPA/US]

Ex. 5 - Deliberative

RCRA Follow-up Questions

1. As discussed on page 5 of the attached document, in 2002, EPA published a guide titled "Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations" which identifies, among other things, a list of non-exempt wastes. We would like to tailor this list to wastes that may occur at oil and gas well sites. For example, the following wastes seem unlikely to be generated at well sites: Gas plant cooling tower cleaning wastes, Refinery wastes, Waste in transportation pipeline related pits, Incinerator ash. Please comment on which non-exempt wastes in the list could occur at oil and gas sites.

Ex. 5 - Deliberative

2. Please clarify the extent to which EPA can directly enforce the prohibition on open dumping. Are there any examples of EPA doing so? Would it be accurate to say EPA would work with the state to encourage state action, in such a case?

Ex. 5 - Deliberative

3. The Region 8 report, "Oil and Gas Environmental Assessment Effort 1996 – 2002," states that EPA issued RCRA 7003 orders at nine sites. We received three examples of such orders; all were issued to commercial oilfield waste disposal sites. (Jim's Water Service, Bill, WY, June 23, 2011; Pure Petroleum LLC, Crook County WY, Sept. 16, 2011; High Plains Resources, Johnson County WY, Oct. 29, 2010). Were any issued to well sites (e.g., noncommercial)?

Ex. 5 - Deliberative

Emergency Planning and Community Right-to-Know Act (EPCRA) Appendix

[attachment "GAO HF EPCRA Appendix - OCE Comm.doc" deleted by Tim Sullivan/DC/USEPA/US]

Ex. 5 - Deliberative

[attachment "Appendix-EPCRA OEM edits with response to GAO question 6-14-12.doc" deleted by Tim Sullivan/DC/USEPA/US]

EPCRA Follow-up Questions

1. At our last meeting officials said they were unsure to what extent hydraulic fracturing or other chemicals on oil and gas wellsites would trigger EPCRA 311 and 312 reporting requirements and agreed to provide additional information after touching base with EPA regions. What additional context can you provide? Specifically we would be interested in a few (3-5) examples of some EPCRA chemicals that are likely to be found at oil and gas well sites in quantities sufficient to trigger EPCRA 311 and 312 reporting requirements, or if EPA believes that most well sites would be unlikely to store chemicals over the triggers.

Ex. 5 - Deliberative

2. To what extent does the exclusion of oil and gas well sites from TRI reporting requirements impair EPA's ability to ensure communities receive needed information about chemical use and releases?

NOTE: OEI has drafted a portion of this response, excerpted below. OCE would propose adding the additional text below.

Ex. 5 - Deliberative

Ex. 5 - Deliberative

3. In the interview, EPA indicated it had a document that looks at whether thresholds for TRI reporting might be triggered at some oil and gas well sites. It was described as a 1997 Supporting document containing the screening process, and possibly estimating the number of facilities that would be affected, and it was noted that it was in the docket but hard to find. Please provide a copy of this document.

Ex. 5 - Deliberative

4. Can EPA provide any updated information on its consideration of oil and gas exploration and production sites for inclusion in the TRI? Are there any documents available? When does EPA expect to issue the proposed rule, or ANPRM?

Ex. 5 - Deliberative

5. In the 1996 proposal for the Industry Expansion Rule, EPA stated that oil and gas extraction activities "may involve the management of significant quantities of EPCRA section 313 chemicals." 61 Fed. Reg. 33588, 33592 (1996). Please identify the section 313 chemicals that are managed in significant quantities in conjunction with oil and gas extraction.

Ex. 5 - Deliberative

Toxic Substances Control Act (TSCA) Appendix

Ex. 5 - Deliberative

[attachment "Appendix_-_TSCA.DOC" deleted by Tim Sullivan/DC/USEPA/US]

TSCA Follow-up Questions

1. Please provide a few (3-5) examples of chemicals that are commonly used in hydraulic fracturing and that are on the TSCA inventory list.

Ex. 5 - Deliberative

2. What is the status of EPA's response to the August 2011 Earthjustice Petition? If it is not yet released, is there a timeline for when it will be released?

Ex. 5 - Deliberative

3. What is the status of the ANPRM?

Ex. 5 - Deliberative